

INSPECTOR GENERAL

29 March 1978

OLC-78-0399/52
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MEMORANDUM FOR: [REDACTED]
Office of General Counsel

FROM : [REDACTED]
Office of the Inspector General

SUBJECT : S2525, Title II Issues

REFERENCE : OGC 78-1620, 15 March 1978

The following are general comments on Title II of S2525 and specific comments on the issues identified in reference.

A. General Comments on Title II:

1. For clarity and economy of language, this Title should address directly the specific limitations and prohibitions on intelligence activities necessary to protect the rights of U.S. citizens. Stating such limitations in the form of authorities, as this title does, not only creates ambiguity as to what is illegal, but leads personnel to conclude that activities not specifically authorized by this title are illegal when such may not be the case. In many of these instances, it is probably not possible to state all of the conditions under which many of these activities may be justified and it should be far easier and clearer to describe limitations on prohibitions.

2. Throughout these procedures, the Attorney General is made responsible for the approval of regulations and activities in a management context beyond the scope of determining questions of law and would appear to be given authority for the approval or

disapproval of activities for which he has no legal responsibility. His role should be limited to that of legal advisor.

3. This title provides limitations on intelligence collection on foreign persons in the U.S. similar to those afforded U.S. persons. Foreign persons should not be given statutory protection from otherwise lawful intelligence activities, but should be considered as "U.S. Persons" if they qualify for that status.

4. We had understood that the Congressional Oversight committees had agreed with or concurred in the language of E.O. 12036. If this is the case, then Section 2 of E.O. 12036, "Restrictions on Intelligence Activities" should serve as a model for both Titles II and III.

5. I am concerned that, in responding to the OGC request for comments on "issues", the OGC paper does not discuss significant "issues" as such but proposes such detailed modifications to the language in Title II as would make Title II acceptable and ignores the more basic flaws described above. I am not persuaded that "fixing up" Title II is the best approach.

B. Specific Comments on the "Issues" in OGC 78-1592: These comments are numbered to correspond to the paragraphs in the OGC paper.

4. Your proposed Section 203(3) should replace the present Section 203(2), (3), and (4).

8/9. For the reasons stated above, we should not define "foreign organization or foreign person". Anyone not a "U.S. Person" is automatically a foreign person.

13. Section 205(a)(2) should be deleted. The Attorney General's responsibilities in this regard are adequately covered in (a)(1).

15. Proposed addition is already in Sections 231-233.

20/22. Here and throughout this title, the use of the term "initiate" when used with "collection" should be replaced by "conduct"

28. Time limits should apply only to "intrusive techniques" (i.e. electronic or surreptitious surveillance, mail opening, or unconsented physical search) and only to U.S. Persons.

33. Section 218 should be combined with Section 213 and the time limits removed. CI activities of the kind described here usually continue for long periods of time and it is not appropriate, in many cases, to inform the person concerned of U.S. interest.

34. Sections 219(2) and (3) should be deleted in their entirety as either redundant with (1) in unnecessarily limiting as to the method of collection. The Section should also apply to counterintelligence and counterterrorist intelligence.

35. Section 220 should be combined with Sections 213 and 218 and the time limits removed.

36. The time period and source limitations should be removed as not appropriate to this.

37. The source limitation should be removed. Other sources and collection techniques may be appropriate.

38. Section 225 should be deleted as inappropriate to this title for the reasons stated above. As written, it has major

omissions in proper authorities to collect information on foreign persons. The proposed change would exempt non-Intelligence Community personnel from its provisions.

39/40. Section 231(a)(6) is not necessary and should be deleted. Its authorities are adequately covered by other sections. This also applies to the proposed addition to Section 232(c).

42. The proposed addition should not permit the processing, retention, or dissemination of information merely because the Attorney General approves, because the information preserves the integrity of data bases or that it is raw data. Such a prescription would be subject to great misunderstanding and possible misapplication.

44. Section 242 should read:

No person acting on behalf of any entity of the Intelligence Community may disseminate, anonymously or under a false identity, information concerning any United States Person without such person's consent if such dissemination poses a risk to the physical safety of such person, or for the purpose of discrediting such person because of such person's exercise of rights protected by the Constitution and laws of the United States.

45. Section 243 should be deleted in its entirety. There is no need to write another statute that tells us to obey the laws of the U.S. and there should certainly be no statute that authorizes

us to violate U.S. law with an Attorney General's approval.

47. The reference to "checks" on "spouses or intended spouses" should be deleted. Any such authority should be an integral part of the authority to make security investigations on applicants and employees.

C. Other Title II Issues:

1. Section 211(a) and other parts of Title II does not allow for lawful collection of information on U.S. Persons in connection with lawful and approved "special activities".

2. Section 212(1)(13) refers to "use of particular techniques of collection". This is too vague and should be deleted.

3. Section 213(1) limits collection to cases where "espionage or other clandestine intelligence activity which involves or may involve a violation of the criminal laws of the United States..." This would seem to preclude collection against activities which are technically lawful, but are still intelligence activities directed against the United States. This seems to be an unnecessary limitation.

4. Sections 213, 214, 218, and 220 could be combined and made consistent with respect to standards and procedures. The standard of "significance" applied in Section 214 should be deleted as unnecessary and inconsistent with the other sections.

5. In Section 214(3), "in an official capacity for" should be replaced by "on behalf of..." In Section 214(4), "abroad" should

be deleted and "or counterintelligence" added at the end of the sentence.

6. In Section 25, it is not clear why the authority of a Service Secretary is not extended to the DCI, Secretary of State or Secretary of Defense.

7. Section 222(c) should include "classified information" after "installation" and "intelligence" before "sources and methods".

8. If Section 225 is retained, then "or acting on behalf" should be added after "employee" in (1); "sabotage, international terrorist activities, or assassination" should be added at the end of (2); and "counterintelligence or counterterrorist intelligence" at the end of (3).

9. In Section 244(b), after "foreign persons", replace "and" with "or". In Section 244(c) the last sentence should be deleted. Collection of nonpublicly available information should be permitted for foreign intelligence or counterintelligence purposes not necessarily on behalf of the FBI.



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